



LEGISLATIVE
SERVICES AGENCY

Serving the Iowa Legislature

LEGISLATIVE GUIDE

Legal Services Division



Note to Reader:

Legislative Guides, prepared in an objective and nonpartisan manner, provide a general survey of a particular area of the law and are intended for use primarily by members of the Iowa General Assembly and their staffs. Legislative Guides are updated periodically to reflect changes in the law. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author:

This Guide was written by Joseph McEniry, J.D., Creighton University, 1992. Mr. McEniry has been a Legal Counsel for the Legal Services Division of the Legislative Services Agency since 1998. He staffs the Judiciary and Public Safety Committees and the Joint Appropriations Subcommittee on the Justice System, and drafts legislation in the areas of judiciary, corrections, and public safety.

Mr. McEniry can be reached by telephone at (515) 281-3189 or by e-mail at: joseph.mceniry@legis.state.ia.us

Iowa Legislative Services Agency
State Capitol
Des Moines, IA 50319

October 2012

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Table of Contents

I. Introduction.....	1
II. Characteristics of Persons Committed to the Sexually Violent Predator Program	1
III. Eligibility.....	2
IV. Process.....	2
A. Commitment of a Sexually Violent Predator	2
1. Petition.....	2
2. Probable Cause Hearing	3
3. Trial and Commitment	4
B. Control, Care, and Treatment	5
C. Annual Review	6
D. Final Hearing.....	6
E. Petition for Discharge or Placement in a Transitional Release Program	7
1. With Authorization	7
2. Without Authorization	7
F. Transitional Release	8
G. Release With or Without Supervision	9
V. Criminal Offenses Committed While in Custody	9
VI. Constitutional Issues	10
VII. Summary	12

Civil Commitment of Sexually Violent Predators



I. Introduction

This Legislative Guide provides an overview of Iowa's law on the civil commitment of sexually violent predators for custodial control, care, and treatment (Sexually Violent Predator Act). In the landmark case *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that permitted the civil commitment of certain sexually violent criminal offenders after the criminals' sentences had been completed.¹ The United States Supreme Court in 2002 affirmed *Kansas v. Hendricks*, and in so doing the Court stated in order for a sex offender to be civilly committed, the state must prove a serious difficulty in controlling behavior.²

In 1998, the General Assembly passed the Sexually Violent Predator Act, which became effective on July 1, 1998. The Iowa Supreme Court has held that the Sexually Violent Predator Act does not violate the Equal Protection Clause under either the United States or the Iowa Constitution.³ The Court has also concluded that the Act does not violate the Ex Post Facto or the Double Jeopardy Clause of the United States or the Iowa Constitution or deny a person due process under the United States or the Iowa Constitution.⁴

This guide addresses who is eligible for this form of civil commitment, the process of civilly committing a sexually violent predator, what type of control, care, and treatment methods are used, how a person is released from commitment, and constitutional issues related to the Act.

The Sexually Violent Predator Act is found in Iowa Code chapter 229A. References to the Iowa Code or Code are to the 2013 Iowa Code. The references to the Iowa Administrative Code are current to August 2012.

II. Characteristics of Persons Committed to the Sexually Violent Predator Program

As of August 2012, 123 persons have been committed for custodial control, care, and treatment as sexually violent predators, 16 have been discharged, and seven persons have died since the inception of the program.⁵ Thirteen of the persons discharged from the program were due to legal decisions and three persons were discharged after a determination was made the persons no longer met the commitment criteria.⁶ In addition, as of August 2012, 11 persons are in a transitional release program without supervision and one person is in transitional release with supervision.⁷ The average annual cost to the

¹ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

² *Kansas v. Crane*, 534 U.S. 407 (2002).

³ *In re Detention of Morrow*, 616 N.W.2d 544, 549 (Iowa 2000); see generally U.S. Const. amend. XIV and Iowa Const. art. 1, § 6 (equal protection).

⁴ *In re Detention of Garren*, 620 N.W.2d 275, 284 (Iowa 2000). See generally U.S. Const. art. 1, § 10 and Iowa Const. art. 1, § 21 (ex post facto); U.S. Const. amend. V and Iowa Const. art. I, § 12 (double jeopardy); and U.S. Const. amend. XIV and Iowa Const. art. I, § 9 (due process).

⁵ E-mail from Dee Johnson on behalf of Jennifer Harbison, Department of Human Services, to Jess Benson, Fiscal Services Division of the Legislative Services Agency (August 13, 2012) (on file with author).

⁶ *Id.*

⁷ *Id.*



Civil Commitment of Sexually Violent Predators

Department of Human Services is approximately \$79,211 per person civilly committed.⁸ All of the persons who have been committed are male and their average age is 49.⁹

III. Eligibility

The Attorney General or a county attorney may file a petition to commit a convicted or charged offender who meets the definition of a sexually violent predator.¹⁰ A sexually violent predator is defined as a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts.¹¹ The General Assembly has found that a small but extremely dangerous group of persons generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior.¹² The General Assembly has further found that a sexually violent predator's likelihood of engaging in repeat acts of predatory sexual violence is high and that the involuntary commitment procedure under Iowa Code chapter 229 is inadequate to address the risk such predators pose to society.¹³

IV. Process

A. Commitment of a Sexually Violent Predator

1. Petition

a. Confined Persons. The filing of a petition to commit a confined person as a sexually violent predator is a three-step process.¹⁴ First, an agency with jurisdiction over a person who is confined and who also may meet the definition of a sexually violent predator must give written notice to the Attorney General and a special multidisciplinary team within 90 days of the person's anticipated discharge date.¹⁵ Second, the multidisciplinary team which has been established by the Director of the Department of Corrections shall assess whether the person meets the definition of a sexually violent predator.¹⁶ If the multidisciplinary team

⁸ Id.

⁹ Id.

¹⁰ Iowa Code §§ 229A.4(1) and 229A.4(2).

¹¹ Iowa Code § 229A.2(11) defines "sexually violent predator." Iowa Code § 229A.2(10) defines "sexually violent offense" as any violation of Iowa Code chapter 709 (relating to sexual abuse offenses), and murder, kidnapping, burglary, child endangerment, sexual exploitation, and pandering if the violation involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse. "Sexually violent offense" is also defined to mean any attempt or conspiracy to commit any offense listed in Iowa Code § 229A.2(10), any offense under prior law in this state or other state which is the equivalent to an offense listed in Iowa Code § 229A.2(10), and any act which has been determined beyond a reasonable doubt to have been sexually motivated.

¹² Iowa Code § 229A.1.

¹³ Iowa Code § 229A.1.

¹⁴ Iowa Code §§ 229A.3 and 229A.4.

¹⁵ An agency with jurisdiction is defined in Iowa Code § 229A.2(1) as an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the Department of Corrections, the Department of Human Services, a judicial district department of correctional services, and the Iowa Board of Parole.

¹⁶ Iowa Code § 229A.3(1). As of August 2012, the multidisciplinary team includes the Department of Corrections' Deputy Director of Offender Services, the Director of the Iowa Coalition against Sexual Assault, a county sheriff, the Social Service Administrator of the Department of Human Services, a clinical psychologist from the Department of Corrections,

Civil Commitment of Sexually Violent Predators



determines the person meets the definition of a sexually violent predator, the team forwards its recommendation to the Attorney General and the prosecutor's review committee.¹⁷ Finally, the prosecutor's review committee, which is appointed by the Attorney General, then makes the determination as to whether the person meets the definition, and if so, the Attorney General may file a petition to commit the person as a sexually violent predator.¹⁸

b. Unconfined Persons. The county attorney of the county in which the person resides, or the Attorney General if requested by the county attorney, may file a petition to commit an unconfined person as a sexually violent predator if the person has committed a recent overt act and certain conditions are met.¹⁹ The conditions include whether the person has been convicted or charged with a sexually violent offense and has been discharged after completion of the sentence, or the person was charged with a sexually violent offense but was subsequently acquitted by reason of insanity, or the person was charged with a sexually violent offense but found to be incompetent to stand trial and was released from any type of supervision.²⁰

2. Probable Cause Hearing

Upon the filing of a petition, the Court is required to make a preliminary determination as to whether probable cause exists to believe the person named in the petition is a sexually violent predator.²¹ If the Court makes a preliminary determination that probable cause exists, the Court shall place the person in custody if the person is not already confined.²² A person placed into custody as a sexually violent predator is not bailable prior to trial.²³ Within 72 hours of being taken into custody or transferred to an appropriate secure facility, the person is entitled to another probable cause hearing which shall be held to finally determine whether probable cause exists to believe the detained person is a sexually violent predator.²⁴ The person may waive the hearing and any party may seek a continuance upon a showing of good cause or the Court on its own motion in the due administration of justice if the person is not substantially prejudiced may continue the probable cause hearing.²⁵ The person has basically the same rights as a criminal defendant, including the right to be represented

the Director of the Sex Offender Treatment Program at the Mount Pleasant Correctional Facility, and the Classification Manager at the Department of Corrections.

¹⁷ Iowa Code § 229A.3(4).

¹⁸ Iowa Code §§ 229A.3(5) and 229A.4(1). The prosecutor's review committee consists of a designee from the Director of the Division of Criminal Investigation in the Department of Public Safety, a deputy attorney general, Special Assistant Attorney General, the President of the Iowa County Attorneys Association, two private attorneys, and the county attorney of the county in which the respondent was last convicted. Telephone interview with John McCormally, Office of the Attorney General, relating to the make-up of the prosecutor's review committee (August 31, 2012).

¹⁹ Iowa Code § 229A.4(2).

²⁰ Iowa Code § 229A.4(2).

²¹ Iowa Code § 229A.5(1).

²² Iowa Code § 229A.5(1).

²³ *Atwood v. Vilsack*, 725 N.W.2d 641, 652 (Iowa 2006).

²⁴ Iowa Code § 229A.5(2).

²⁵ Iowa Code § 229A.5(2).



Civil Commitment of Sexually Violent Predators

by counsel and to present evidence and cross-examine the state's witnesses.²⁶ However, the rules of evidence do not apply and the state may rely solely upon the petition to prove probable cause.²⁷ If at the conclusion of the probable cause hearing the Court determines that probable cause does exist, the Court shall direct the person to be held at an appropriate secure facility for an evaluation as to whether the person is a sexually violent predator.²⁸

3. Trial and Commitment

Within 90 days of the probable cause hearing or its waiver, a trial must be held to determine whether the person is a sexually violent predator.²⁹ The person or the person's attorney may waive the 90-day trial requirement.³⁰ If the 90-day trial requirement is not waived and the trial is not held within 90 days of the probable cause hearing or its waiver, the case shall be dismissed and the defendant released from custody.³¹

The person may retain experts to perform an examination prior to trial.³² If the Court determines the examination is necessary and the person is indigent, the state is responsible for compensating the expert.³³ The state may also examine witnesses under oath prior to the trial.³⁴ A person is entitled to a jury trial to determine if the person is a sexually violent predator.³⁵ However, the judge or the Attorney General may demand a jury trial if the person chooses not to make such a demand.³⁶ The jury shall consist of eight members, the same number as are seated in other civil trials.³⁷ At trial the state carries the burden of proof, which must be beyond a reasonable doubt, for the determination that the person is a sexually violent predator and the Iowa Rules of Civil Procedure and Evidence are applicable.³⁸ The determination must be unanimous if tried before a jury.³⁹ If the Court or jury determines that the person is a sexually violent predator, the person is then committed to the custody of the Director of Human Services for control, care, and treatment.⁴⁰ If the Court or jury determines that the person is not a sexually violent predator, then the Court shall order the person to be released.⁴¹

²⁶ Iowa Code § 229A.5(2).

²⁷ Iowa Code § 229A.5(3).

²⁸ Iowa Code § 229A.5(5). Iowa Code § 229A.2(2) defines "appropriate secure facility" to mean a state facility that is designed to confine but not necessarily treat sexually violent predators.

²⁹ Iowa Code § 229A.7(3).

³⁰ Iowa Code § 229A.7(3).

³¹ *In re Detention of Fowler*, 784 N.W.2d 184, 192 (Iowa 2010).

³² Iowa Code § 229A.6(2).

³³ Iowa Code § 229A.6(2).

³⁴ Iowa Code § 229A.5A(2).

³⁵ Iowa Code § 229A.7(4).

³⁶ Iowa Code § 229A.7(4).

³⁷ *In re Detention of Williams*, 628 N.W.2d 447, 454 (Iowa 2001).

³⁸ Iowa Code §§ 229A.7(4) and 229A.7(5).

³⁹ Iowa Code § 229A.7(5).

⁴⁰ Iowa Code § 229A.7(5).

⁴¹ Iowa Code § 229A.7(8).

Civil Commitment of Sexually Violent Predators



B. Control, Care, and Treatment

Once committed, the person is subject to the Department of Human Services' control, care, and treatment until it is determined that the person is safe to be placed in a transitional release program or discharged.⁴² A person committed as a sexually violent predator is confined in a secure facility and is segregated at all times from any other patients under supervision of the department.⁴³ Sexually violent predator control, care, and treatment are provided at the Civil Commitment Unit for Sexual Offenders (CCUSO) at Cherokee.⁴⁴ The CCUSO provides a secure environment for the indefinite treatment of sexually violent predators who are believed to be a high risk to reoffend.⁴⁵ There are five treatment phases used to measure a person's progress through the Sexually Violent Predator Program.⁴⁶

- The "orientation and assessment" phase allows the person to become acquainted with staff and develops a clear understanding about the program expectations and rules.
- The "core phase" requires the person to participate in a minimum one-year curriculum of psycho-educational groups designed to teach important concepts and skills fundamental to learning control of sexual impulses and being able to meet needs in prosocial ways.
- The "advanced phase" requires the person to work on applying the principles and concepts learned in the "core phase" and to achieve the goals established for the individualized treatment plan.
- The "honor phase" expects the person to demonstrate a high level of cooperation, insight, motivation, and application of basic principles taught in the program as well as be a model for other persons in the program.
- The "transition phase" allows the person to gradually be given increasing opportunities to go on passes and to live in a progressively less restrictive setting.

The criteria used for advancing through the treatment phases include the following:⁴⁷

- The one-year curriculum of psycho-educational group classes includes topics such as cognitive skills, victim empathy, relapse prevention, relationship skills, human sexuality, self-esteem, anger management, personal victimization, and families of origin.
- Insight into various factors that contributed to offending behavior.
- Resolution of past traumas and resentments.

⁴² Iowa Code § 229A.7(5).

⁴³ Iowa Code § 229A.7(7).

⁴⁴ Iowa Admin. Code 441—1.3(2). Under 2002 Iowa Acts, Second Extraordinary Session, ch. 1003, § 131, the unit will be relocated to the State Mental Health Institute at Cherokee.

⁴⁵ Iowa Department of Human Services, Civil Commitment Unit for Sexual Offenders, <http://www.dhs.state.ia.us/Consumers/Facilities/CCUSO.html> (last visited September 21, 2012).

⁴⁶ E-mail from Jason Smith, Director, Civil Commitment Unit for Sexual Offenders, Department of Human Services, to Joe McEniry (August 28, 2012) (on file with author).

⁴⁷ Iowa Department of Human Services, Civil Commitment Unit for Sexual Offenders, <http://www.dhs.state.ia.us/Consumers/Facilities/CCUSO.html> (last visited September 21, 2012).



Civil Commitment of Sexually Violent Predators

- Demonstration of victim empathy and empathy for others.
- Demonstration of satisfactory leisure skills.
- Demonstration of good cognitive coping skills.
- Reduction of deviant arousal as ascertained by two physiological measures.
- Development of a strong relapse prevention plan.
- Demonstration of adequate social and intimacy skills.
- Development of a realistic and positive self-concept.
- Development of good communication and problem-solving skills.
- Motivation for treatment and change.

In addition, in order to advance through the treatment phases, the person must successfully pass a series of polygraph examinations about their sexual deviancy.⁴⁸

C. Annual Review

A rebuttable presumption exists that the commitment of a sexually violent predator should continue.⁴⁹ However, a person committed as a sexually violent predator is entitled to an annual review of the person's mental abnormality.⁵⁰ The person may retain an expert to perform the examination or, if the person is indigent, the Court may appoint an expert.⁵¹ The expert's report shall be provided to the Court that committed the person and the Court then shall conduct an annual review, and if warranted, set a final hearing on the placement status of the committed person.⁵² At the annual review, the person has the burden of proof to prove by a preponderance of evidence that a final hearing should be held to determine that either the mental abnormality of the person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or the person is suitable for placement in a transitional release program.⁵³ If the person shows by a preponderance of the evidence that a final hearing should be held, the Court shall set a final hearing within 60 days of the determination to hold the hearing and the burden of proof shifts to the state at the final hearing.⁵⁴

D. Final Hearing

If the annual review results in the Court setting a final hearing, the person is entitled to an attorney at the final hearing and has all the constitutional protections that were given the person at the original commitment proceeding, including a jury trial if a jury demand is made at least 10 days before the final hearing.⁵⁵ The Attorney General represents the

⁴⁸ Id.

⁴⁹ Iowa Code § 229A.8(1). The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses.

⁵⁰ Iowa Code § 229A.8(2). The Iowa Rules of Evidence do not apply to the annual review. See Iowa Code § 229A.8(5).

⁵¹ Iowa Code § 229A.8(2).

⁵² Iowa Code § 229A.8(3). The annual review may be based solely on written records.

⁵³ Iowa Code § 229A.8(5)(e)(1).

⁵⁴ Iowa Code § 229A.8(5)(e)(2). See *in re Detention of Johnson*, 805 N.W.2d 750, 754 (Iowa 2011) requiring the final hearing to be held within 60 days of the Court determining a final hearing should be held and *Johnson* at 757 for the civil remedies available for failing to hold the final hearing within 60 days of the determination. See also Iowa Code § 229A.8(6)(d) for the shift in the burden of proof at the final hearing.

⁵⁵ Iowa Code § 229A.8(6)(a).

Civil Commitment of Sexually Violent Predators



state at the final hearing and also has the right to demand a jury trial at least 10 days before the final hearing.⁵⁶ The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the person's mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged, or is not suitable for placement in a transitional release program.⁵⁷ If a mistrial is declared, the confinement or placement status of the person does not change.⁵⁸ After a mistrial has been declared, a new trial must be held within 90 days of the mistrial.⁵⁹ The state and the person may stipulate to a transfer to a transitional release program if the Court approves the stipulation.⁶⁰

E. Petition for Discharge or Placement in a Transitional Release Program

1. With Authorization

The Director of Human Services may authorize a petition for discharge or placement in a transitional release program.⁶¹ If at the time of the annual review the person has filed a petition for discharge or placement in a transitional release program with authorization from the director, the Court sets a final hearing within 90 days of the authorization and an annual review is not held.⁶² However, if no annual review has been scheduled and the director authorizes the person to file a petition for discharge or placement in a transitional release program, the Court sets a final hearing within 30 days of receipt of the petition.⁶³

2. Without Authorization

If the person files a petition for a discharge or placement in a transitional release program without authorization at the time of the annual review the Court first conducts the annual review.⁶⁴ Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the Court is to endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds.⁶⁵ If the Court determines that a petition is frivolous, the Court is to dismiss the petition without a hearing.⁶⁶ In order for the Court to set a final hearing on the petition for

⁵⁶ Iowa Code § 229A.8(6)(c).

⁵⁷ Iowa Code § 229A.8(6)(d). During the final hearing, if the Director of Human Services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the Court, testimony by a victim may be admitted. See Iowa Code § 229A.8(6)(e).

⁵⁸ Iowa Code § 229A.8(6)(f).

⁵⁹ Id.

⁶⁰ Iowa Code § 229A.8(7).

⁶¹ Iowa Code § 229A.10. "Discharge" means an unconditional discharge from the Sexually Violent Predator Program. See Iowa Code § 229A.2(3). "Transitional release" means a conditional release from a secure facility operated by the Department of Human Services with the conditions of such release set by the Court or the department. See Iowa Code § 229A.2(12).

⁶² Iowa Code § 229A.8(5)(f).

⁶³ Iowa Code § 229A.10.

⁶⁴ Iowa Code § 229A.8(5)(g).

⁶⁵ Iowa Code § 229A.11.

⁶⁶ Id.



Civil Commitment of Sexually Violent Predators

discharge or placement in a transitional release program, the person must first prove by a preponderance of the evidence that there is evidence to rebut the presumption of continued commitment, which would lead a reasonable person to believe a final hearing should be held to determine that either the mental abnormality of the person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or that the person is suitable for placement in a transitional release program.⁶⁷ If the person shows by a preponderance of the evidence that a final hearing should be held, the Court sets a final hearing within 60 days of the determination to hold the hearing and the burden of proof shifts to the state at such a hearing.⁶⁸

F. Transitional Release

Transitional release means a conditional release from a DHS secure facility with the conditions of such release set by the Court or the department.⁶⁹ Placement in a transitional release program is appropriate if all of the following apply:⁷⁰

- The person's mental abnormality is no longer such that the person is at high risk to reoffend.
- The person has achieved and demonstrated significant insights into the person's sex offending cycle.
- The person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.
- A detailed lapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the person's mental abnormality and sex offending history.
- No major discipline reports have been issued for the committed person for a period of six months.
- The person is not likely to escape or attempt to escape.
- The person is not likely to commit acts constituting sexually violent offenses.
- The placement is in the best interest of the person.
- The person has demonstrated a willingness to agree to abide by the rules of the program.

A person placed in a transitional release program must also register as a sex offender as provided in Iowa Code chapter 692A.⁷¹ A person placed in a transitional release program may be returned to the secure facility by the treatment staff in the program.⁷² If a person is returned to the secure facility, the Director of Human Services or the director's designee is required to notify the district court that an alleged violation of the program's

⁶⁷ Iowa Code § 229A.8(5)(e)(1).

⁶⁸ Iowa Code § 229A.8(5)(e)(2). See also Iowa Code § 229A.8(6)(d).

⁶⁹ Iowa Code § 229A.2(12).

⁷⁰ Iowa Code § 229A.8A(2).

⁷¹ Iowa Code § 229A.8A(4).

⁷² Iowa Code § 229A.8B(1).

Civil Commitment of Sexually Violent Predators



rules has occurred and a hearing is held to determine if a violation has occurred.⁷³ At the hearing the burden is on the state to show by a preponderance of the evidence that a violation occurred.⁷⁴ If the Court determines a violation has occurred, the Court may place the person back into the transitional release program with further restrictions or order the person returned to the secure facility.⁷⁵ If the Court determines no violation occurred, the person shall be returned to the transitional release program.⁷⁶

G. Release With or Without Supervision

The law provides an option for release with or without supervision while maintaining Court jurisdiction over the person. Release of a person from the secure facility or a transitional release program is appropriate if any of the following apply:⁷⁷

- The Attorney General stipulates to the release.
- The Court or a jury has determined that the person should be discharged from the program, but the Court has determined it is in the best interests of the community to order release with or without supervision before the person is discharged.

A person may not petition the Court for release with or without supervision.⁷⁸ If release with or without supervision is ordered, the Department of Human Services prepares a release plan addressing the committed person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug treatment, sex offender treatment, or any other treatment which may be necessary.⁷⁹ If the person is released with supervision, an agency with jurisdiction that is familiar with the placement of criminals in the community supervises the committed person.⁸⁰ If the committed person violates the release plan, the agency supervising the person is responsible for initiating any Court proceedings against the person.⁸¹ The burden is on the state to show by a preponderance of the evidence that a violation of the release plan has occurred.⁸² If the Court finds the committed person violated the release plan, the Court may order the person to be confined in a secure facility, place the person in the transitional release program, or rerelease the person with or without supervision.⁸³

V. Criminal Offenses Committed While in Custody

A person who is detained to determine whether probable cause exists to believe the person is a sexually violent predator, designated a "safekeeper," or who has been committed as a sexually violent predator remains in custody unless released by court order

⁷³ Iowa Code § 229A.8B(3).

⁷⁴ Iowa Code § 229A.8B(4).

⁷⁵ Iowa Code § 229A.8B(5).

⁷⁶ Id.

⁷⁷ Iowa Code § 229A.9A(1).

⁷⁸ Iowa Code § 229A.9A(5).

⁷⁹ Iowa Code § 229A.9A(2).

⁸⁰ Iowa Code § 229A.9A(4).

⁸¹ Iowa Code § 229A.9A(4).

⁸² Iowa Code § 229A.9B(4).

⁸³ Iowa Code § 229A.9B(5).



Civil Commitment of Sexually Violent Predators

or discharged.⁸⁴ If a safekeeper or a person who has been committed as a sexually violent predator escapes from custody, the person commits a simple misdemeanor or may be subject to punishment for contempt.⁸⁵ If the person commits any criminal offense, the civil commitment proceeding or the treatment process is suspended until the criminal proceedings are completed.⁸⁶ Upon the filing of a criminal complaint, indictment, or information, the person is transferred to the county jail in the county where the criminal offense occurred and, if the person is sentenced to prison, the person serves the sentence at a correctional institution.⁸⁷ A person subject to an order of civil commitment shall not be paroled or otherwise released after serving a sentence for the commission of a crime other than to the secure facility operated by the Department of Human Services.⁸⁸ If a person who has been placed in a transitional release program, released with or without supervision, or discharged pursuant to Iowa Code chapter 229A subsequently is convicted of a sexually predatory or sexually violent offense, the person shall be sentenced to life in prison on the same terms as a class “A” felon.⁸⁹

VI. Constitutional Issues

The constitutionality of Iowa’s Sexually Violent Predator Act has been upheld by the Iowa Supreme Court.⁹⁰ The United States Supreme Court has also affirmed the landmark *Kansas v. Hendricks* case.⁹¹ The factor that seems to be the basis for upholding the constitutionality of sexually violent predator commitment statutes is the fact that the commitment process is deemed to be civil in nature; thus many of the constitutional safeguards that apply in criminal cases do not apply to a person committed as a sexually violent predator.⁹² The Iowa Supreme Court has concluded that Iowa’s Sexually Violent Predator Act is civil and not criminal.⁹³ In determining whether a statute is criminal or civil, the Court stated it first must decide whether the:

...[legislature] in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. Second, where [the legislature] has indicated an intention to establish a civil penalty, [the Court] inquire[s] further whether the statutory scheme [is] so punitive either in purpose or effect as to negate that intention.⁹⁴

In order to ascertain the punitive nature of a statute, the Court then must consider the following factors:

⁸⁴ Iowa Code § 229A.5, Iowa Code § 229A.2(8), and Iowa Code § 229A.7(5). “Safekeeper” means a person who is confined in an appropriate secure facility but who is not subject to an order of commitment.

⁸⁵ Iowa Code § 229A.5B(2) defines “escape” to include any person in custody who leaves or attempts to leave a facility without authorization, any knowing or voluntary absence from a place where the person is required to be present, or any escape or attempt to escape custody while being transported by facility personnel.

⁸⁶ Iowa Code § 229A.5C(1).

⁸⁷ Iowa Code § 229A.5C(2).

⁸⁸ Iowa Code § 229A.5C(3).

⁸⁹ Iowa Code § 901A.2(6). If the person commits a misdemeanor offense under Iowa Code chapter 709, the person shall be sentenced to life in prison with the possibility of parole. See Iowa Code § 901A.2(6).

⁹⁰ Morrow at 549; Garren at 284.

⁹¹ *Seling v. Young*, 531 U.S. 250, 260 (2001).

⁹² *Id.* at 260; Garren at 283.

⁹³ Garren at 283.

⁹⁴ *Id.* at 278, quoting *United States v. Ward*, 448 U.S. 242, 248 (1980).

Civil Commitment of Sexually Violent Predators



[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it and whether it appears excessive in relation to the alternative purpose assigned....⁹⁵

The Court will not override legislative intent to interpret a statute as criminal unless there is clear proof it is not civil in nature.⁹⁶

Double Jeopardy. The courts have ruled that sexually violent predator commitment statutes do not violate the Double Jeopardy Clause of the United States or the Iowa Constitution.⁹⁷ The Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that can be described as punishment.⁹⁸ Rather, the prohibition of double jeopardy applies only to criminal cases, and since it has been determined that the Iowa Act is civil in nature, the commitment of a sexually violent predator is not a second prosecution for the same crime.⁹⁹

Ex Post Facto. The Iowa sexually violent predator commitment statutes do not violate the Ex Post Facto Clause of the United States or the Iowa Constitution because the statutes are considered civil in nature; thus, the statutes do not retroactively punish a person for conduct prior to the effective date of the statutes.¹⁰⁰

Equal Protection. The Iowa Supreme Court has rejected the claim that the Iowa Act violates the Equal Protection Clauses of the United States and Iowa Constitutions.¹⁰¹ The United States and Iowa Constitutions both require that similarly situated persons be treated alike under the law.¹⁰² The Court found that the distinction drawn between a person civilly committed for having a serious mental impairment under Iowa Code chapter 229 as opposed to Iowa Code chapter 229A is rationally related to the state's interest in protecting the public while effectively treating sexually violent predators who have been unamenable to existing mental illness treatment.¹⁰³ According to the Court, classification does not deny equal protection simply because in practice it results in some inequality; practical problems of government permit rough accommodations.¹⁰⁴

Due Process. The courts have so far also rejected claims that sexually violent predator commitment statutes violate the Due Process Clauses of the United States and Iowa Constitutions.¹⁰⁵ In both constitutions, this clause provides that no person shall be

⁹⁵ Id. at 278, quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963).

⁹⁶ *Hudson v. United States*, 522 U.S. 93, 100 (1997); Garren at 278.

⁹⁷ Seling at 259; Garren at 284.

⁹⁸ Hudson at 103.

⁹⁹ Garren at 283-284.

¹⁰⁰ Seling at 260; Garren at 283.

¹⁰¹ Garren at 286.

¹⁰² Williams at 452.

¹⁰³ Id. at 454. Iowa Code chapter 229 is the civil commitment chapter for persons with a mental illness, while Iowa Code chapter 229A is the civil commitment chapter for sexually violent predators.

¹⁰⁴ Morrow at 548.

¹⁰⁵ Hendricks at 353; Garren at 286.



Civil Commitment of Sexually Violent Predators

denied life, liberty, or property without due process of law.¹⁰⁶ The United States Supreme Court in *Hendricks* held that even though freedom from restraint has always been at the core of the liberty protected by the Due Process Clause, an individual's constitutionally protected interest in avoiding physical restraint may be overridden even in the civil context.¹⁰⁷ In determining what process is due when faced with the loss of a right, the Iowa Supreme Court has set out the following factors that must be considered: (1) the private interest affected, (2) the state's interest, and (3) the risk of erroneous deprivation of the individual's interest under the process, and the value of additional or different safeguards in that process.¹⁰⁸

Summary of Constitutional Issues. The United States Supreme Court in *Seling v. Young* makes note that persons committed under a sexually violent predator commitment statute may have legitimate claims in state court regarding the conditions and treatment methods administered by a sexually violent predator program.¹⁰⁹ The Court further stated that it is a question of state law whether the Sexually Violent Predator Program is operating in accordance with state law and whether any appropriate remedy should be provided.¹¹⁰

Under the Court opinions, it appears that if the state does not continue to adequately treat the person as mandated by the sexually violent predator commitment statute and it just warehouses the individuals, the statute could be interpreted as punitive in nature and be deemed unconstitutional.

VII. Summary

This Legislative Guide provides an overview of Iowa's Sexually Violent Predator Act found in Iowa Code chapter 229A. The overview addresses who is eligible for civil commitment as a sexually violent predator, the process of civilly committing the person, what type of control, care, and treatment methods are used, how a person is released from commitment, and the constitutional issues that relate to the implementation of the Act.

A person may be committed as a sexually violent predator if a person has been previously convicted or charged with a sexually violent offense and suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts.

A person is entitled to have a jury make the determination that the person is a sexually violent predator. Prior to this determination, and after a finding of probable cause, a person is held as a safekeeper until the determination is made whether the person is a sexually violent predator. If a determination is made that the person is a sexually violent predator, the person is committed for control, care, and treatment to the Sexually Violent Predator Program operated by the Department of Human Services. After commitment, a sexually violent predator is entitled to an annual examination of the person's mental abnormality.

¹⁰⁶ Garren at 284-285.

¹⁰⁷ Hendricks at 346.

¹⁰⁸ Williams at 458.

¹⁰⁹ Seling at 265-266.

¹¹⁰ Seling at 265.

Civil Commitment of Sexually Violent Predators



Discharge from the Sexually Violent Predator Program or placement in a transitional release program can be initiated three different ways. First, the Director of Human Services may authorize a sexually violent predator to petition for discharge or placement in a transitional release program. Second, a person may petition for discharge or placement in a transitional release program without authorization from the Director of Human Services. Third, at the annual review the person proves by a preponderance of the evidence that the mental abnormality of the person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or the person is suitable for placement in a transitional release program.

A person can be placed in a transitional release program or released with or without supervision without being discharged from the Sexually Violent Predator Program.

1216RR